

REMARKS

Upon entry of the foregoing amendment, claims 1-18 are pending for the Examiner's consideration, with claims 1, 8, 12, and 16 being the independent claims. Claims 1 and 4 have been amended herein, and claims 16-18 have been added. Applicant respectfully submits that the foregoing amendments introduce no new matter. In this regard, the Examiner is referred, for example, to pages 2-5 of the application as originally filed.

Double-Patenting

The Examiner has rejected claims 1-15 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,727,347 ("the '347 patent"). Filed herewith is a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a "Prior" Patent, executed by the assignee of the above-captioned application, for the '347 patent. A Statement Under 37 C.F.R. § 3.73(b) establishing the right to act on behalf of the assignee with regard to the above-captioned application is also filed herewith. The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991). The filing of a terminal disclaimer serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection. *Id.*; M.P.E.P. § 804.02. Based upon filing of the Terminal Disclaimer and accompanying fee, Applicant respectfully submits that the obviousness-type double patenting rejection should be withdrawn.

Rejection Under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1, 2, and 5 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,849,893 ("the Lobberding patent"). Independent claim 1 has been amended herein, thereby rendering this rejection moot. In particular, claim 1 has been amended herein to recite that the enhancer molecule is a compound having an affinity to a receptor or molecule characteristic of the target site, wherein the receptor or molecule is present on a surface of the target site. As noted by the Examiner on page 3 of the Office Action, "the DNA to which the peptide nucleic acids of Lobberding *et al.* would bind would not be present

on the surface of the target cell or tumor cell,” and, for that reason, the Lobberding patent was not applied against claim 4. Claim 1 has been amended to include the limitation from claim 4 that the enhancer molecule is a compound having an affinity to a receptor or molecule characteristic of the target site, wherein the receptor or molecule is present on a surface of the target site, and claim 4 has been amended accordingly. Therefore, Applicant respectfully submits that the rejection based upon the Lobberding patent cannot properly be maintained against claim 1 as amended herein, or the more narrow claims depending therefrom. For at least all of the foregoing reasons, Applicant respectfully submits that the present rejections of claims 1-15 cannot properly be maintained.

Applicant respectfully submits that newly presented independent claim 16, and dependent claims 17-18, are not disclosed in or suggested by the Lobberding patent. For example, independent claim 16 requires the saturation percentages recited as “p1,” “p2” and “p3,” wherein “p1”+“p2”+“p3”>0 and ≤ 100 , and at least two of “p1,” “p2” and “p3” are greater than 0. Such a relationship is not disclosed in or suggested by the Lobberding patent.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Dated: November 30, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrea G. Reister", is written over a horizontal line.

Andrea G. Reister

Registration No.: 36,253
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
(202) 662-6000
Attorney for Applicant